

DEPARTMENT OF
FINANCE

GRAY DAVIS, GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

December 17, 2002

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**COMMISSION ON
STATE MANDATES**

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

The Department of Finance has reviewed the City of Sacramento and County of Sacramento's November 19th, 2002, rebuttal to our August 30, 2002 analysis of the test claim submitted by the City of Sacramento and the County of Sacramento (claimant) asking the Commission to determine whether specified costs incurred under Chapter No. 901, Statutes of 2000, (SB 739, Solis) are reimbursable state mandated costs (Claim No. CSM-01-TC-30 "Local Government Employment Relations").

On Page 1 of the Claimant's rebuttal, the Claimant raises the issue that our test claim analysis is inconsistent with Finance's bill analysis of the June 6, 2002 version of SB 739 in the 2000 Legislative Session which determined the related legislation would result in a significant mandated cost to the State.

First, according to the California Court of Appeals' finding in *City of Richmond v. Commission on State Mandates*, legislative bill analyses are irrelevant to the issue (64 Cal. App. 4th 1190, 1191). In *City of Richmond* the Court held that the Legislature has entrusted the determination of what constitutes a state mandate to the Commission.

Second, we note that the June 6th analysis attachment provided with our letter is for a version of SB 739 that no longer exists and therefore is not a viable basis of argument. We also disagree with the Claimant that later amendments to this legislation before chaptering were insignificant. In fact, we note that the August 25, 2002 version of SB 739 introduced the specific language that we believe creates the law barring this test claim from being a mandate. The introduction of Government Code Section 3500 as provided in the August 25th version and contained in the chaptered version of SB 739 specifically holds that this legislation's costs are not reimbursable.

We continue to hold the position that this test claim legislation does not create a new program or a higher level of service since the duties of the local agency employer representatives as stated in Chapter 901 are "substantially similar to the duties and responsibilities required under existing collective bargaining enforcement procedures and therefore the costs incurred by the local agency employer representatives in performing those duties and responsibilities under this chapter are not reimbursable as state-mandated costs."

In addition, Chapter 901 provides for offsetting savings to local agencies since this chapter would shift local employers from a process where they rely on the court system to litigate unfair labor practice charges to a process where they would rely on the Public Employment Relations

Board (PERB) for those types of decisions. This is noted by the PERB process itself on the agency's website (<http://www.perb.ca.gov/html/perbfunctions.htm>):

An unfair practice charge is filed with PERB by an employer, employee organization, or employee alleging that conduct has occurred which is unlawful under one of the Acts administered by PERB. The charge is evaluated to determine whether a prima facie case of an unlawful action has been established. A charging party establishes a prima facie case by alleging sufficient facts to permit a reasonable inference that a violation of the Meyers-Millias-Brown Act, the Educational Employment Relations Act, the Dills Act, or the Higher Education Employer-Employee Relations Act has occurred. If the charge fails to state a prima facie case, a Board agent issues a warning letter notifying the charging party of the deficiencies of the charge. If the charge is neither amended nor withdrawn, the Board agent dismisses it. The charging party may appeal the dismissal to the Board itself. If the Board agent determines that a charge states a prima facie case of a violation, a formal complaint is issued. The respondent is then given an opportunity to file an answer to the complaint.

Once a complaint has been issued, an Administrative Law Judge (ALJ) or other PERB agent is assigned to the case and calls the parties together for an informal settlement conference, usually within 30 days of the date of the complaint. If settlement is not reached, a formal hearing before a PERB ALJ is scheduled, normally within 60 days of the date of the informal conference. Following this adjudicatory proceeding, the ALJ prepares and issues a proposed decision. A party to the case may then file an appeal of the proposed decision to the Board itself. The Board itself may affirm, modify, reverse or remand the proposed decision. Proposed decisions which are not appealed to the Board itself are binding upon the parties to the case.

The above process truncates the Claimant's participation and provides operational savings through a faster adjudication; a court process comparatively could take years to finalize. The Claimant's rebuttal is to argue by declaration that the PERB process does not provide savings. The Claimant has at this time not provided any statistical, fiscal, or numerical data showing case costs trends evidencing otherwise. Thus our position continues to have merit.

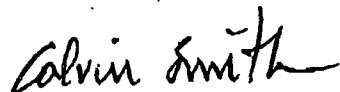
Again, we conclude that the duties listed in this test claim are discretionary and therefore do not qualify as reimbursable state-mandated costs. Under *County of Los Angeles v. Commission on State Mandates*, the Court of Appeal held that if a local entity has alternatives under the statute other than the mandate contribution, the contribution does not constitute a state mandate (32 Cal. App. 4th 805). The Claimant has the alternatives available in that it may choose to argue an affected case in front of the PERB, it may externally develop a settlement, or it can try to resolve the employment issue internally. Only when the Claimant chooses to engage the case within PERB's jurisdiction does the Claimant then fall within the requirements of that process.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your August 30, 2002 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

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If you have any questions regarding this letter, please contact Tom Lutzenberger, Principal Program Budget Analyst, or Keith Gmeinder, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,



S. Calvin Smith
Program Budget Manager

Attachments

PROOF OF SERVICE

Test Claim Name: Local Government Employment Relations
Test Claim Number: CSM-01-TC-30

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 8 Floor, Sacramento, CA 95814.

On December 17, 2002, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and non-state agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 8th Floor, for Interagency Mail Service, addressed as follows:

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Facsimile No. 445-0278

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State Controller's Office
Division of Accounting & Reporting
Attention: Michael Havey
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B-29

Legislative Analyst's Office
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C-50

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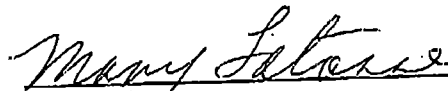
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Ms. Catherine Smith
California Special District Association
1215 K Street, Suite 930
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 17, 2002, at Sacramento, California.


Mary Latone